IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1341/05
(Bhanwar Singh & Ors. Vs. State of Rajasthan & Anr.)

Date of Order : 13/10/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Dhirendra Singh for the petitioners
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. I.R.Choudhary with Mr. V.S.Choudhary for the non-petitioners.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 18.5.2005 passed by Judicial Magistrate, First Class, Piparshahar, district Jodhur (for short 'the trial court' hereinafter) whereby the trial court took the cognizance of offences under Sections 452 and 323/34 IPC and issued process against the petitioners.

I have heard learned counsel for the parties. Carefully gone through the order passed by the trial court and the material available on record.

It is contended by learned counsel for the petitioners that in fact, it were the complainant and his associates, who assaulted the petitioners and for which a cross case has been registered against them which is pending before the trial court.

Learned counsel submits that the petitioners No.1 and 3 are old persons and they are not capable of causing any injury to the other party.

Learned counsel appearing for the complainant submits that there are statements on oath of the witnesses and categorically overt act has been assigned to all the three petitioners.

Learned counsel for the petitioners submits that the occurrence did not take place in the house of the complainant but it was on the way. Be that as it may, since there is a cross case that suggests that the occurrence has taken place. As to whether, the occurrence took place on the way or at the house of the complainant, has to be decided by the trial court when the parties lead evidence.

Keeping in view the decision of Hon'ble Supreme Court in Jagdish Ram Vs. State of Rajasthan, AIR 2004 SC 1734, in my view, the trial court was justified in taking cognizance and issuing process against the petitioners.

The petition has no force and it is therefore, dismissed. Stay petition also stands dismissed. The trial court shall decide this case and the cross case lodged by the petitioners together.

(H.R.PANWAR),J.

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